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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/535,405	05/18/2005	Brian Arthur Cavill	15430.0001	5997
27890	7590	08/23/2006	EXAMINER	
STEPTOE & JOHNSON LLP 1330 CONNECTICUT AVENUE, N.W. WASHINGTON, DC 20036			TRAN, HOANG Q	
			ART UNIT	PAPER NUMBER
			2874	

DATE MAILED: 08/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/535,405	CAVILL, BRIAN ARTHUR	
	<b>Examiner</b>	<b>Art Unit</b>	
	Hoang Tran	2874	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 June 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 4-12 is/are pending in the application.
- 4a) Of the above claim(s) 11 and 12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1 and 4-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 11 and 12 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Priority***

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Election/Restrictions***

Newly submitted claim 11 and 12 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The newly submitted claims are drawn on to a new distinct species of the material of the device of which was not presented previously.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 11 and 12 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1-7 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by the US Patent to Briscoe (6,431,216).**

In terms of Claim 1, Briscoe teaches a protective device for use in the protection of at least a portion of an elongated article (Fig 1), the protective device including a main body, first and second parts which connectible together such that (Fig 8), in an assembled position the main body has a chamber therein, the first and second parts each having two longitudinal extending side edge portions respective side edge portions of the first part being adapted to cooperate with respective side edge portions of the second part to connect the two parts together in the assembled position, said first and second parts overlapping when the assembled position and being connected together by relative movement in the axial direction so as to adopt the assembled position (Fig 5), wherein the first and second parts are partially circular when viewed in cross-section, the first part comprising a major segment of a circle and the second part forming a minor segment of a circle (Fig 8), wherein the side edge portions of the first or second part include a recessed section for receiving the side edge portion of the other part (Fig 7 [38 and 40]).

As for Claim 4, Briscoe teaches the device of claim 1, wherein when the assembled position the main body is open at least one end (Fig 6).

As for Claim 5, Briscoe teaches the device of claim 1, wherein the when in the assembled position the main body is open at both ends (Fig 6).

As for Claim 6, Briscoe teaches the device of claim 1, wherein one of the ends of the main body is belled for receiving the other end of an adjacent device (Fig 6).

As for Claim 7, Briscoe teaches the device of claim 1, further including insulation on the internal surface of one or both parts of the main body (Col 3 [20-40]).

As for Claim 9 and 10, Briscoe teaches the device of claim 1, wherein the main body of the device is formed from material known as reactive powder concrete or ultra high performance fiber reinforced concrete (Col 4 [1-5]).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Briscoe (6,431,216) in view of the US Patent to Muller (6,730,846).**

With respect to Claim 8, Briscoe teaches the protective device of claim 1. Briscoe does not teach a protective device of claim 1, further including a locating element which projects from the inner wall of one of the two parts. Muller does teach a protective device including a locating element in order to properly align the internal wiring. A motivation for such an application would be to prevent interference between the outside layers of the protective device with the actual wiring/fiber during transmission. This application also increases transmission quality since the wiring or fibers inside the protective device is properly aligned. It would have been obvious at the time of the invention to apply the teaching of Muller to the protective device of Briscoe to further ensure high quality transmission of the fiber/wiring cables.

***Response to Arguments***

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Applicant's arguments with respect to claim 1-10 have been considered but are moot in view of the new ground(s) of rejection. Applicant argues the prior art reference does not disclose two components of which are circular in geometry. However, Figure 8 shows a cross section view in which the two components are circular in geometry. The newly amended claims have been considered and the prior art reference has been accordingly to match the amended limitations.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hoang Tran whose telephone number is 571-272-5049. The examiner can normally be reached on 9:00AM - 5:00 PM.

Art Unit: 2874

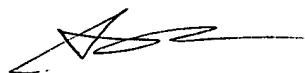
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rodney Bovernick can be reached on 571-272-2344. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ht



Hoang Tran  
AU 2874  
August 21, 2006

  
SUNG PAK  
PRIMARY EXAMINER